

IN THE MATTER OF:	*	BEFORE THE MARYLAND
JUDGE W. KENNEDY BOONE, III	*	COMMISSION ON
CJD 2007-047	*	JUDICIAL DISABILITIES
	*	

TO: Judge W. Kennedy Boone, III
Associate Judge, Circuit Court for Washington County
Fourth Judicial Circuit

PRIVATE REPRIMAND

TAKE NOTICE that the Maryland Commission on Judicial Disabilities (the "Commission"), through its Investigative Counsel, made and completed an investigation of Judge W. Kennedy Boone's conduct with regard to a complaint filed by Nancy Forster, Esquire, Public Defender for the State of Maryland. Ms. Forster filed her complaint with the Commission on July 2, 2007. Judge Boone was notified of the nature of the complaint and investigation and tendered such written and verbal responses thereto as he wished. Judge Boone and the Commission's Investigative Counsel were afforded a further opportunity to present information to the Judicial Inquiry Board in September, 2007. The Judicial Inquiry Board having heard Judge Boone's explanation from Investigative Counsel and having reviewed his written reply to the complaint also heard from Investigative Counsel regarding the facts and circumstances of this case. Investigative Counsel proposed and Judge Boone agreed that the case be resolved through the issuance of a Private Reprimand, that will be

made public, in conjunction with a Stipulation of Facts and Waiver of Hearing (the "Stipulation"). The Stipulation shall also be made public. The Commission, having reviewed the Stipulation, as recommended by the Judicial Inquiry Board and the Commission's Investigative Counsel, and as agreed to by Judge Boone, hereby incorporates and adopts by reference the attached Stipulation into this Private Reprimand.

The Commission concludes, based upon clear and convincing evidence, that Judge W. Kennedy Boone, III violated Canons 1, 2A, 3A, 3B(4) and 6 of the Maryland Code of Judicial Conduct, Rule 16-813 of the Maryland Rules. The Commission finds that Judge Boone's comments on April 24, 2007 were undignified and disparaging and constitute sanctionable conduct within the meaning of Maryland Rule 16-803(g). The Commission further determines that because Judge Boone's comments took place on the record, in a public courtroom, they represent a serious lapse in judgment on the part of Judge Boone which warrants this Private Reprimand being made public, as the appropriate sanction. The Commission further intends for this Private Reprimand to serve as a warning that any further such comments or conduct by Judge Boone may result in Charges and possible further discipline.

The Commission's willingness to agree to this procedural approach in determining that sanctionable conduct occurred and the appropriate discipline to be imposed was based upon the recommendation of Investigative Counsel,

the recommendation of the Judicial Inquiry Board, and Judge Boone's willingness to enter into the attached Stipulation. There was no significant dispute of facts between Investigative Counsel and Judge Boone. Investigative Counsel and Judge Boone agree that the Stipulated Facts support a finding of violation of the Canons of Judicial Conduct. Investigative Counsel and Judge Boone agree that the transcript of the hearing of April 24, 2007 provides an evidentiary basis for the Commission to find sanctionable conduct. Therefore, the only matter for the Commission to resolve was to determine the appropriate sanction in the case. Judge Boone's admission that his comments were inappropriate and his in-person apology to the individuals who were directly effected by his statements were both significant factors in the Commission's decision to accept the Stipulation and impose a Private Reprimand.

The Commission hereby issues this Private Reprimand which concludes the Commission's case in CJD-2007-047.

Date

Patrick L. Woodward, Chair
Maryland Commission on Judicial Disabilities

Seen and Consented to:

Date

Judge W. Kennedy Boone, III

IN THE MATTER OF	*	BEFORE THE MARYLAND
JUDGE W. KENNEDY BOONE, III	*	COMMISSION ON
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STIPULATION OF FACTS AND WAIVER OF HEARING

TO: Judge W. Kennedy Boone, III
Associate Judge, Circuit Court for Washington County
Fourth Judicial Circuit

Judge W. Kennedy Boone, III ("Judge Boone") and the Maryland Commission on Judicial Disabilities (the "Commission") by and through its Investigative Counsel, Steven P. Lemmey, Esquire, ("Investigative Counsel"), hereby agree that the Commission may properly determine its disposition in this case based solely upon the facts and conclusions stated in this Stipulation of Facts and Waiver of Hearing (the "Stipulation"), taking into account the complaint filed by Nancy Forster, Esquire, with the Commission on July 2, 2007, the information contained in the transcript of the hearing in State of Maryland v. Jermaine Jackson held before Judge Boone in the Circuit Court for Washington County on April 24, 2007, and the information contained in the recommendation of Investigative Counsel made to the Judicial Inquiry Board in September, 2007.

Judge Boone agrees that he was notified that Investigative Counsel opened a file before the Commission based upon a complaint filed by Nancy

Forster on July 2, 2007. Judge Boone agrees that he was notified of the nature of all of the information in the Investigative Counsel's file, was afforded an opportunity to review the information developed during the investigation and has voluntarily met with Investigative Counsel and has had the opportunity to have his own counsel present throughout all aspects of the investigation. Judge Boone agrees that he was given an opportunity to appear before the Judicial Inquiry Board as part of the investigative process and that he waived that appearance.

Judge Boone, having been given an opportunity to consult with counsel, gives his express consent to this Stipulation. The facts and conclusions upon which the Commission may act are as follows:

1. At all times relevant to this case, Judge Boone was a judge of the Circuit Court for Washington County, Maryland. Judge Boone was appointed to the Circuit Court for Washington County in 1996. Presently Judge Boone continues to serve as a Circuit Court judge for Washington County, Maryland.

2. On July 2, 2007, the Commission on Judicial Disabilities received a formal complaint from Nancy Forster, Esquire, Public Defender for the State of Maryland. Ms. Forster complained about several different cases in the Circuit Court for Washington County where Judge Boone had served as the Circuit Court judge.

3. One of the cases that Ms. Forster complained about involved Judge Boone's handling of the case known as the State of Maryland v. Jermaine

Jackson, Case #21-K-07-38714. During the course of the hearing in State v. Jermaine Jackson on April 24, 2007, Judge Boone made an inappropriate reference to three women of color who serve as Assistant Public Defenders. Judge Boone referred to the three women as the "supremes". Later, during the same hearing Judge Boone made a further inappropriate comment when he insisted that an "experienced male attorney" from the Public Defender's Office be appointed to represent Mr. Jackson.

Judge Boone's comments in the State v. Jackson hearing are reflected in pages 2 - 3 and 7 of the transcript of that proceeding.

Pages 2 - 3:

Mr. Creeden: This is Mr. Jackson your Honor.

The Court: There he is. Okay.

Mr. Creeden: Mr. Jackson wrote to Mrs. Riley, the head of our office. She received a letter Thursday, discussed it with me Friday and Monday. Mr. Jackson has asked to have a different lawyer and on the record I want him to know Mrs. Riley has said she will do that. That she will give him another felony lawyer.

The Court: You are not going to stick one of the supremes with him are you?

Mr. Creeden: I have no - - I have - -

The Court: I mean, you know, they are good - - They don't need this.

Mr. Creeden: I wanted Mr., uh, Jackson to know she's willing to give him a lawyer but it's - -

The Court: Will it be Hutchinson or Reed? He needs a - -

Mr. Creeden: I have no idea.

The Court: Okay, he needs - -

Mr. Creeden: But Mr. Jackson - -

The Court: He needs an experienced male attorney.

* * * *

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Mr. Jackson: But it's being put on me saying that I asked for the continuance.

The Court: No, it isn't. Don't try your case here in front of me now. The point is you are dissatisfied with your attorney, is that correct?

Mr. Jackson: Yes.

Mr. Creeden: Thank you your Honor.

The Court: Okay, you are out Mr. Creeden.

Mr. Creeden: Thank you.

The Court: You are now unrepresented. You will be represented by the Office of the Public Defender. The supervising attorney, Mary S. Riley, will appoint an attorney to represent you. And I am instructing it will be a male attorney. Now I am saying that because of the experience. I mean it is not that the women over there - We have a new group of people.

4. On June 25, 2007, Judge Boone spoke with Public Defender Nancy Forster. In his telephone conversation with Ms. Forster Judge Boone admitted that he was wrong to refer to the three women as the "Supremes" and that it was wrong for him to make the comment he made about the need for an "experienced male attorney".

5. In June 2007, Judge Boone met personally with each of the three effected women and personally apologized to them for his inappropriate comments and offered to recuse himself from their future cases.

6. On September 7, 2007, Judge Boone provided a written response to the complaint to the Commission. In his written response Judge Boone acknowledged that the above-cited transcripts were accurate and that his comments regarding the three female Public Defenders and the need for an experienced male attorney were totally inappropriate and insensitive. Judge Boone wrote in his response that his comments were intended to shield the three female attorneys from representing a very difficult, streetwise, and manipulative defendant. Judge Boone, in his September 7, 2007, written response to the Commission states:

The bottom-line as to this incident is that despite my

intentions and true feelings toward the three women, my in court comments were totally wrong and demeaning, having been made at a stressful time involving a very difficult defendant. Judges' conduct and statements must be above board and beyond reproach where perceptions by others is most important. I failed in maintaining proper decorum for which I feel ashamed and have attempted to make amends to those offended. Since then I review my conduct daily to learn from this incident and comport myself accordingly.

Judge Boone also stated in that response:

Judges must be held to high standards as to conduct and statements, and I have violated the Maryland Code of Judicial Conduct with my statement(s). Despite mitigation, qualifying statements and true intent, I should be held accountable and sanctioned accordingly.

7. Judge Boone was afforded an opportunity to review the contents of this Stipulation and all related documents and was given an opportunity to review said documents with the counsel of his choice. Judge Boone elected to proceed without counsel and agreed with Investigative Counsel that they would jointly request that the Commission accept this Stipulation.

8. Judge Boone acknowledges that his actions are subject to sanction and that the Commission determines the sanction to be imposed. By his signature on this Stipulation Judge Boone affirms that he agrees to the Stipulation voluntarily, having been given an opportunity to consult with counsel and after having an opportunity to review the evidence collected by Investigative Counsel. The Commission will decide this case based upon the facts contained in this Stipulation and the documents received from Judge Boone and the Commission's Investigative Counsel.

9. Judge Boone hereby waives his right to a hearing before the Commission and waives his right to any subsequent proceedings before the Maryland Court of Appeals with regard to these cases. Judge Boone waives his right to challenge the findings that serve as the basis for the Private Reprimand that is being issued along with this Stipulation. Judge Boone agrees, pursuant to Maryland Rule 16-807 (b)(1)(C) that the Private Reprimand issued in these cases may be admitted into evidence in any subsequent disciplinary proceeding against him to the extent that it is relevant to the charges at issue or the sanction to be imposed.

10. Judge Boone acknowledges that his comments at the hearing of State v. Jermaine Jackson on April 24, 2007, were in violation of Canons 1 2, 3A, 3B(4) and 6 of the Maryland Code of Judicial Conduct.

The pertinent portions of the Canons provide:

CANON 1
Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should observe high standards of conduct so that the integrity and independence of the judiciary will be preserved. The provisions of this Code should be construed and applied to further that objective.

CANON 2
Avoidance of Impropriety and the Appearance of Impropriety

A. A judge shall avoid impropriety and the appearance of impropriety. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the impartiality and

integrity of the judiciary.

CANON 3
Performance of Judicial Duties

A. General responsibilities. A judge shall perform the duties of judicial office diligently, impartially, and without having or manifesting bias or prejudice, including bias or prejudice based on age, disability, national origin, race, religion, sex, sexual orientation, or socioeconomic status.

B. Adjudicative responsibilities. . . (4) A judge shall be dignified.

CANON 6
Compliance

A. Courts. This Code applies to each judge of the Court of Appeals, the Court of Special Appeals, a circuit court, the District Court, or an orphans' court.

11. Judge Boone has agreed to execute this Stipulation and understands that a copy of this Stipulation will be retained by the Commission and shall be considered a public document. The Judge acknowledges that this Stipulation and any related document issued by the Commission based upon this Stipulation may be published in the *Maryland Register* and otherwise republished in a manner consistent with the Commission's past practices. The parties further agree that in the event that Judge Boone chooses to make any public statements regarding the content of this Stipulation and any related documents, the Commission, or any other aspect of this case, pursuant to Maryland Rule 16-810(b)(2), the Commission may issue explanatory statements in its discretion.

I, JUDGE W. KENNEDY BOONE, III, HAVE READ THE TERMS OF THIS STIPULATION AND WAIVER OF HEARING AND CAREFULLY REVIEWED ITS CONTENTS. I HAVE BEEN GIVEN AN OPPORTUNITY TO REVIEW THESE DOCUMENTS WITH MY COUNSEL. I UNDERSTAND THE STIPULATION AND WAIVER OF HEARING AND ACCEPT IT AS FULLY SET FORTH ABOVE.

Date

Judge W. Kennedy Boone, III
Circuit Court for Washington County

APPROVED AND RECOMMENDED:

Date

Steven P. Lemmey, Investigative Counsel